IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1329 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
BACHIBEN W/O.MOHANBHAI SUKHABHAI & ORS

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Appearance :
MR IM PANDYA APP for Appellant
MR BHARGAV N BHATT for Respondent Nos. 1 to 7
MR LR PATHAN for Respondent No.8

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/10/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. Richard Harris on behalf of learned Advocate Mr. L.R. Pathan waives for respondent No.8 while learned Advocate Mr. Bhargav N. Bhatt waives for Respondents No. 1 to 7.

2 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Extra Assistant Sessions Judge, Bhavnagar, on 19th of January, 2005, in Sessions Case Nos. 124 of 2001 and 22 of 2002, whereby all the nine accused of both the Sessions Cases, came to be acquitted by the Trial Court for the offences punishable under Sections 143, 149, 307, 323, 294, 506(2) and 114 of the Indian Penal Code.

2 According to prosecution case, a complaint is filed by one Hiraben Bhanubhai Bariya and she married to one Bhanubhai before 18 years of the incident. Accused No.1 – respondent No.1 is mother-in-law of the complainant; accused No.2 – respondent No.2 is wife of elder brother of the husband of the complainant; accused No.3 – respondent No.3 is elder brother of husband of the complainant; accused No.4 - respondent No.4 is younger brother of the husband of the complainant; accused No.5 – respondent No.5 is father-in-law of the complainant; accused No.6 – respondent No.6 is the sister of husband of the

complainant; accused No.7 - respondent No.7 is wife of the younger brother of the husband of the complainant; accused No.8 – respondent No.8 is third party while accused No.9 happens to be Advocate of other accused.

3 According to complainant, the incident occurred on 22nd of February, 1999 at about 8.30 a.m. Her husband was out somewhere and accused came to her house. They caught hold of her and her mother-in-law made her to consume poison. Thereafter, she was beaten by all the accused and accused gave abuses. She thereafter became unconscious and started vomiting. Therefore, she was shifted to Government Hospital, Bhavnagar. According to complainant, accused No. 9 before two days of the incident had been to her house and accused No.8 also came to her house before two days of the incident and threatened her to kill. It appears that the case which complainant advanced about the incident is that the complainant had no issue and that there were some dispute amongst the party about immovable property. This crime came to be registered before `A' Division Police Station, Bhavnagar. PW-5 Laxmanbhai Tapubhai was on duty at hospital and PSO P.J. Pathak informed him that complainant was admitted to hospital with history of consuming poison. Laxmanbhai Tapubhai recorded the statement of complainant which was recorded as

FIR and has been produced on record at Exhibit–29. Thereafter the investigation was handed over to Swarupsinh Amarsinh Parmar, PW-8, who first submitted charge sheet against accused Nos. 1 to 8 and that criminal case was committed to the Court of Sessions and was numbered as Sessions Case No. 124 of 2001. Thereafter a supplementary charge sheet was submitted in the Court of leaned JMFC against accused No.9 and committing the said criminal case, which was registered as Sessions Case No. 22 of 2002 and, therefore, both the cases were tried together by learned Trial Judge. During proceeding, it appears that instead of offence under Section 328 of the I.P. Code, the accused had committed the offence under Section 307 and, therefore, the trial was conducted against the accused for such offence. The learned Trial Judge initially framed charge against each of the accused vide Exhibit -5 on 23.9.2004. Thereafter, the learned APP preferred an Application at Exhibit – 16 for amending the charge and charge was framed under Section 307 of the Indian Penal Code against each of the accused. Each of the accused pleaded not guilty to the charge and therefore they were put to trial. Prosecution examined as many as eight witnesses and produced on record documentary evidence to prove its case. When prosecution case was over, further statements of each of the accused was recorded by the Trial Court under Section 313 of the Code of Criminal Procedure. Thereafter, the learned Trial Judge heard the prosecution as

well as the defence and came to the above conclusion of acquitting the accused and, hence, this Appeal.

4 It is to be noted that this Appeal is against original accused Nos. 1 to 8 and no appeal is preferred by the State against original accused No. 9.

5 Learned Advocates and learned APP appearing in the matter requested this Court to hear this matter finally as the Record and Proceedings of the Trial Court is available with us and that they would provide extra copies of the evidence recorded during the trial and documents produced. The request is granted and the matter is heard finally.

6 Learned Counsels appearing in the matter were heard in detail in respect of this Appeal.

7 We have gone through the Record and Proceedings thoroughly and have re-appreciated the evidence with reference to the conclusions arrived at by the Trial Court. We have scanned the reasons assigned by the Trial Court for acquittal. We have taken into consideration the vital features of the matter and reasonable

probabilities arising out of the case. We have scrutinized the whole matter thoroughly.

8 Going through the prosecution case, PW-1 Vijaykumar Vallabhdas Sampat, examined at Exhibit – 18, deposed that he was on duty at Government Hospital, Bhavnagar and examined at 11.30 the complainant - Hiraben Bhanubhai. In her history, she stated that she had consumed poison. She was admitted as an indoor patient and treated. On examination, she was found fully conscious. Her temperature, pulse rate, respiration, B.P., cardiac system, etc. were normal. He gave a certificate to this respect which is produced at Exhibit–19. According to the Doctor, on examining the patient, there were no symptom of patient having consumed any poison. PW-2 Ranabhai Meghjibhai Sumara, examined at Exhibit–20, was Executive Magistrate at the relevant time and he recorded dying declaration of the patient on 22nd of February, 1999 which he produced at Exhibit – 21. In his cross-examination, he admitted that when he approached the patient, he found that the patient was in normal condition and he felt that she had not consumed any poison. PW-3 Lavjibhai Gagjibhai, examined at Exhibit–23, is examined to prove that between the parties there were some disputes about property, but the witness has not supported the prosecution case. PW-4 Hiraben Bhanubhai Bariya - complainant is

examined at Exhibit–24. She stated that the incident occurred at 9.30 a.m. Since she had no issue, the accused were taunting her and accused gave her abuses. Accused made her to consume poison and thereafter she had become unconscious. Her neighbours took her to hospital. She has been cross-examined by the defence in detail. PW-5 Laxmansinh Tapubhai, examined at Exhibit- 27, is Duty Head Constable of Bhavnagar Civil Hospital and he received information from PSO Mr. Pathak from the police station about admitting Hiraben Bhanubhai in hospital and he recorded the statement of complainant which he identified at Exhibit–29. PW-6 Genuben Rajakbhai, examined at Exhibit–33 happens to be an eye witness, but she has not supported the prosecution case in any manner. PW-7 Ishwardas Manchhadas, examined at Exhibit–34 is panch of panchnama at Exhibit–37 of scene of offence, but this witness has not supported the prosecution case. PW-8 Swarupsinh Amarsinh Parmar, examined at Exhibit–35, is the Investigating Officer of crime registered against the accused and according to him he submitted two charge sheets, one against accused Nos. 1 to 8 and supplementary charge sheet against accused No.9. He recorded the statements of the witnesses and draw panchnamas and filed two charge sheets.

9 This is all is the evidence of the prosecution.

10 Re-appreciating the evidence produced on record, it clearly appears that the case of the prosecution is categoric to the extent that accused Nos.1 to 7 caught hold of the complainant and made her to consume poison and, therefore, complainant Hiraben was admitted to government hospital. Now, considering the evidence of PW-1 Dr. Vijaykumar Vallabhdas Sampat, it clearly appears that, when PW-1 examined complainant, she was absolutely normal and there were no symptoms of any kind which indicated that the complainant had consumed poison. So, the case of the prosecution which hinges on sole testimony of the complainant is not corroborated by the medical evidence. Noteworthy it is that complainant goes to say that she vomited while she was taken to hospital, but during investigation, no such evidence was collected and was sent to Forensic Science Laboratory. So far as other allegations are concerned against all the accused about abusing the complainant and taunting her, there is no evidence at all, except the say of the complainant, which needs corroboration, more particularly, when it is found that the say of the complainant was not trustworthy in respect of the fact that she was made to consume poison at the hands of the accused. In these circumstances, after considering the evidence as a whole and taking into consideration that there were some dispute between the parties about property and the compromise also had taken place, the learned Trial

Judge came to the conclusion that the complainant was not trustworthy and that the prosecution failed to prove the charge levelled against the accused beyond doubt.

11 This is an appeal against the acquittal and the scope of the Appeal against the order of the acquittal is well defined. It is settled law that even if legitimate second view is possible from the evidence recorded during the trial than the view taken by the Trial Court; no interference is permitted unless it is found that the conclusions arrived at by the Trial Court are perverse, manifestly erroneous, palpably wrong and demonstrably unsustainable. Going through the record carefully and even re-appreciating the evidence, we found that the view taken by the Trial Court is probable and possible view of acquitting the accused from the charges levelled against them from the evidence recorded during the trial. Therefore, there is no reason to interfere in the judgment and order of acquittal impugned in this Appeal and hence, the following order :

"Appeal stands dismissed"

(J. R. VORA, J.) **(M. R. SHAH, J.)**

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